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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,708	09/30/2003	Dale J. Hlavin	MARKERS-C	4537

7590 04/18/2005  
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EXAMINER

SILBERMANN, JOANNE

ART UNIT PAPER NUMBER

3611

DATE MAILED: 04/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/674,708

**Applicant(s)**

HLAVIN, DALE J.

**Examiner**

Joanne Silbermann

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2-8 and 13-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-8, 13-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings were received on January 19, 2005. These drawings are approved.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In line 11 "the extending pin" lacks antecedent basis.

### ***Allowable Subject Matter***

4. The indicated allowability of claim 7 is withdrawn in view Atkins. Rejections based on the new interpretation of the reference follow.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 2, 4, 5, 7, 8, 13 and 15-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Atkins et al. US #5,572,835.

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7. Atkins discloses flag 11 (Figure 4) having linear sleeve 121 and extension tab 92 secured above an uppermost part of the sleeve. Sleeve 121 fits around tubular insert 10d. Insert 10d may be made of plastic or other materials. The extension tab is considered to be flexible and bendable in that all material is flexible to some extent and may be bent. Tab 92 includes opening 102 (Figure 12) and is secured to the linear sleeve through clips 110 and 142 (Figure 4). Capping member 84 is secured at the top of the assembly. Openings 140, 141 form vertically spaced attachment connectors secured to the sleeve. The flag is attached to the pole (Figure 1) and the tab is attached to extending pin 86.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 3, 6 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Atkins.

10. Atkins does not teach using a metal grommet in hole 102 or the openings in the sleeve, however Atkins does teach using grommets. Grommets in general are well known in the art of flags and banners. It would have been obvious to a person having ordinary skill in the art to utilize a grommet in the opening 102 if the opening needed to be strengthened.

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11. Regarding claim 6, Atkins does not teach the bottom of the sleeve partially closed. Atkins shows notches 71 and 72 which reduce the diameter of the sleeve and hold it in place (Figure 4). It would have been obvious to one of ordinary skill in the art to place this holding means at the bottom of the sleeve as an equivalent alternative location.

### ***Response to Arguments***

12. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

13. Applicant's arguments directed toward the tab being flexible and bendable have been considered, however even metal is considered to be flexible and bendable. This is not based on the examiner's personal knowledge. As described in the rejection, the tab is attached to the sleeve which is attached to a pole. Tab 92 is attached to the pole at the extension as shown in Figure 4 of Atkins.

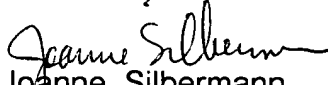
14. Applicant argues that the sleeve of Atkins is not sewn into the attachment side of the flag, however the claims do not require that it be sewn, only secured.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joanne Silbermann whose telephone number is 571-272-6653. The examiner can normally be reached on M-F 5:30 - 2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on 571-272-6651. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Joanne Silberman  
Primary Examiner  
Art Unit 3611

JS